

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF SANITATION DISTRICT )  
NO. 1 OF CAMPBELL AND KENTON )  
COUNTIES FOR AUTHORITY TO CONSTRUCT )  
\$23,200,000 OF FACILITIES; TO ISSUE ) CASE NO. 9310  
REVENUE BONDS IN THE APPROXIMATE )  
AMOUNT OF \$15,475,000; AND TO )  
DEFEASE ALL NOW OUTSTANDING REVENUE )  
BONDS AMOUNTING TO \$20,620,000 )

O R D E R

On May 27, 1987, the Franklin Circuit Court issued its Opinion and Judgment in the matter of Sanitation District No. 1 of Campbell and Kenton Counties v. Public Service Commission of Kentucky, Civil Action No. 86-CI-0134, which was an appeal of the final Commission Order issued in Case No. 9310. This Order is issued pursuant to the aforementioned Judgment.

On March 27, 1985, Sanitation District No. 1 of Campbell and Kenton County ("District") filed with the Commission an application to construct \$23,200,000 of facilities, to issue revenue bonds in the approximate amount of \$15,475,000 and to defease all outstanding revenue bonds amounting to \$20,620,000. After the receipt of testimony and a hearing the Commission issued a final Order on December 20, 1985, denying the District's request to issue revenue bonds, denying the approval of defeasance of current outstanding revenue bonds, and finding that a certificate of public convenience and necessity was required for the proposed

\$22 million construction project. Additionally, the Commission ordered that a show cause proceeding be opened to further investigate recapitalization options open to the District. Such case, No. 9385, was in fact opened although the Order in Case No. 9385 was later enjoined by the Franklin Circuit Court.

#### DISCUSSION

In denying the District's proposed issuance of revenue bonds to defease outstanding bonds, the Commission found that cash reserves placed in special funds did not have restricted availability, and were therefore available for the purpose of retiring outstanding bonds. The Franklin Circuit Court, however, in holding otherwise, made reference to KRS 220.460 which provides:

The funds accumulated in the depreciation account shall be expended in balancing the depreciation in the works of the district or in making new construction, extensions or additions. Any such accumulations may be invested by the Board of Directors in the manner authorized by statute for other trust funds. The income from such investment shall be carried in the depreciation accounts.

The District having been organized pursuant to the provisions of KRS Chapter 220, and based upon the Circuit Court's interpretation and application of KRS 220.460, it appears that this Commission is unable to require the District to use funds pledged to a depreciation reserve account for the purpose of defeasing outstanding revenue bonds.

The Franklin Circuit Court further found that the proposed construction projects did not require certificates of public convenience and necessity, for such projects were found to be

ordinary extensions of existing systems in the usual course of business pursuant to 807 KAR 5:001(9)(3). With respect to this specific program of construction undertaken at a time when customer charges had been reduced by the District in the amount of \$425,000, the Commission acknowledges the finding of the circuit court with respect to the construction.

FINDINGS AND ORDERS

Having considered the opinion rendered by the Franklin Circuit Court on May 27, 1987, and being advised the Commission is of the Opinion and finds that:

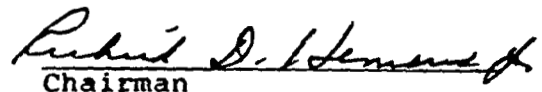
1. The Commission has been directed to approve the District's application in its entirety, and HEREBY ORDERS that the District's application be approved in its entirety.

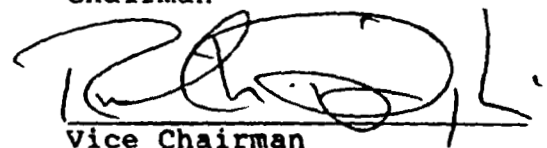
2. The Commission shall exercise any authority it may have to monitor the construction programs and receive periodic progress reports, and the District shall comply with any orders of the Commission not inconsistent with the May 27, 1987, Order of the Franklin Circuit Court.

3. Any portion of the Commission Order in Case No. 9310 not affected by the court's order shall remain in full force and effect.

Done at Frankfort, Kentucky, this 14th day of August, 1987.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

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Executive Director